

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOEL HOLLEY,

Plaintiff,

No. CIV S-10-0615 EFB P

vs.

GARY SWARTHOUT, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Currently before the court is defendants' request for an extension of time to file and serve an answer to the complaint, and plaintiff's request for leave to file an amended complaint. Dckt. Nos. 15, 16.

Federal Rule of Civil Procedure ("Rule") 15(a)(1) provides that "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Here, defendants have not yet filed a responsive pleading or a motion under Rule 12(b), (e), or (f). Plaintiff therefore, is presently free to file an amended complaint without obtaining leave of court.

1 Accordingly, it is hereby ORDERED that:

2 1. Plaintiff's January 10, 2011 motion for leave to amend is denied as unnecessary; and

3 2. Defendants' January 10, 2011 request for an extension of time is granted. Defendants
4 have 30 days from the date of this order to file and serve an answer to the complaint.

5 So ordered.

6 DATED: January 20, 2011.

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EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE